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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 DAVID MOORE, No. C 07-03850 SI

9 Plaintiff,

**ORDER RE: INDEPENDENT  
PSYCHIATRIC EXAMINATION OF  
PLAINTIFF**

11 | GILEAD SCIENCES, INC.

**Defendant.**

14 On December 7, 2011, defendant Gilead Sciences, Inc. (“Gilead”) filed a discovery dispute with  
15 the Court regarding an independent psychiatric examination of plaintiff David Moore. In it, Gilead  
16 states that Moore recently identified a neuropsychiatrist whom he plans to call at trial “regarding issues  
17 of damages including, but not limited to, plaintiff’s neuropsychological assessment, emotional distress,  
18 pain and suffering, and psychological and/or psychiatric injury suffered by Plaintiff based on the events  
19 of this case and Plaintiff’s medical history.” Doc. 118, Ex. A, at 2. In response, Gilead is requesting  
20 the Court to compel Moore to submit to an independent mental examination by a forensic psychiatrist  
21 pursuant to Fed. R. Civ. P. 35 (“Rule 35”). Moore filed an opposition to Gilead’s request on December  
22 20, 2011. Moore argues that Gilead has not provided sufficient detail about its proposed examination  
23 for the Court to fulfill the requirements of any Rule 35 order, and, furthermore, that fact discovery has  
24 closed and defendant has not provided any argument that a mental exam would be expert discovery  
25 subject to a different deadline than fact discovery.

26 The Court finds that Gilead has made a sufficient showing of good cause as required by Rule  
27 35(a)(2)(A) to order an independent mental exam of Moore. However, Moore is correct that a Rule 35  
28 order “must specify the time, place, manner, conditions, and scope of the examination, as well as the

1 person or persons who will perform it." Fed. R. Civ. P. 35(a)(2)(B). Gilead has not provided the Court  
2 with sufficient information about the proposed exam to satisfy these requirements. The parties are  
3 therefore ORDERED to meet and confer to discuss the specifics of the mental exam. If the parties fail  
4 to agree on those specifics, they may submit their dispute to the Court.

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8 **IT IS SO ORDERED.**

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10 Dated: December 23, 2011

*Susan Illston*

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SUSAN ILLSTON  
United States District Judge

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